

20

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O. A. No. 320 of 2010

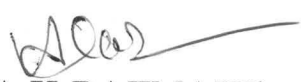
Cuttack the 22nd/day of January, 2014

Sri Arun Kumar Upadhyay Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTION

1. Whether it be referred to reporters or not? ☒
2. Whether it be circulated to PB,CAT,New Delhi for circulation to all the Benches or not? ☒


(R.C.MISRA)
Member(Admn.)


(A.K.PATNAIK)
Member (Judl.)

21

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.320 of 2010

Cuttack, this the 22nd day of January, 2014

CORAM

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDICIAL)

THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

.....

Sri Arun Kumar Upadhyay, IPS (Odisha-1976), aged about 57 years, Son of Late Sri Chandra Sekhar Upadhyay residing at B-9, CB-9, Cantonment Road, Cuttack-75300 at present posted as DIG (Trg) at State Police Academy, Bhubaneswar, without work from 19.06.2003.

.....Applicant

(Legal Practitioner – M/s.B.Panda, B.B.Sahu, Bijay Panda)

Versus

Union of India represented through-

1. The Secretary to Government of India, Ministry of Home, North Block, New Delhi-110 001.
2. The Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi-110 001.
3. The Secretary to Government of India, Department of Personnel, North Block, New Delhi-110 001.
4. The Chief Secretary to Government of Odisha, Secretariat, Bhubaneswar, Dist. Khurda, PIN-751 001.
5. Government of Odisha represented by Principal Secretary (Home), Secretariat, Bhubaneswar, Dist. Khurda, PIN-751 001.
6. The Director General of Police, Odisha, State Police Headquarters, Cuttack-753 001.



22

2

OA No.320/2010
A.K.Upadhyaya-Vrs-UOI&Ors

7. Shri Santosh Kumar, IAS, Chief Administrator, KBK, Board of Revenue Building, Plot No. K-2, Unit-IV, Keshari Nagar, Behind Rajiv Bhawan, Bhubaneswar, Dist. Khurda, PIN-751 001.

.....Respondents

(Legal practitioner: Mr.U.B.Mohaptra, Mr.G.C.Nayak & Mr.D.K.Behera)

ORDER

A.K.PATNAIK, MEMBER (JUDICIAL):

Applicant is an Odisha cadre IPS Officer of 1976 batch. On allegation of omission and commission, Disciplinary Proceedings under Rule 9 of the AIS (D& A) Rule, 1969 ^{were} ~~was~~ started against him. The competent authority appointed Respondent No.7 as the IO to enquire into the allegations levelled against him. The Applicant's grievance is that through representation dated 5.6.2010, he had sought two months' time to submit his reply, after receipt of documents asked for by him in the said representation but the IO proceeded with the enquiry *ex parte* and submitted its report holding the applicant guilty of all the charges and recommended as under:

"XXXXX

XXXXX

XXXXX

27. The member of service is riddled with conflicted relationship with his colleagues. He seems to be an odd lot intensely focused on a single subject. The subject of defaming some of his colleagues by regularly deriding them. Writing petitions seems to be a ritual for him for nurturing illusion that he is a truth teller. He also has a cruel side. He gets strange pleasure out of hurting others. It is possible that he does not realize it. The acts akin to it could be the reasons at the bottom for him gaining the misfortune of non-promotion and languishing in the rank of DIG. He does not fit in the company of his colleagues. The Member of Service seems to be a difficult personality, self-absorbed, adamant, contentious and opinionated.

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23

3

OA No.320/2010
A.K.Upadhyaya-Vrs-UOI&Ors

28. The Member of Service has incurred into his typical mould. He has become like a hard stone. It is difficult to reshape him. In my view, it is not possible to unhinge him from the perch, he has chosen to occupy. No hope is seen for the improvement of his conduct. He is addicted to writing petitions for annoying and harming others. He is not likely to jettison this addiction.

29. The Member of Service, as we have seen above, has refused to do the research work. I wonder, whether he would be able to do any other official work assigned to him in a non-controversial and productive manner. He is showing no contrition for outraging his colleagues. No expression of remorse. No penitence for malfeasance. He is contrary to nature, reason and commonsense. He is a deviant personality. He has adopted an inflexible posture. He does not appear to be fit for public service. It is not desirable to entrust him the public responsibility because his writings show that he is incapable of thinking and acting rationally and in public interest. He has forfeited his right to retain his place in the Police Service.

30. In view of above, **the undersigned has no alternative but to recommend the major penalty of compulsory retirement (as described in Rule 6 (1) of the All India (Discipline and Appeal) Rules, 1969) for imposing on the Member of Service.**

31. xxxxx xxxxx xxxxx"

2. Copy of the said report was supplied to the applicant vide letter dated 24th May, 2010 calling upon him to make his statement/representation which has been challenged by the Applicant in this OA praying therein as under:

"(i) For quashing of the arbitrary, malicious, unlawful and irregular inquiry report submitted by the Inquiring Officer, Shri Santosh Kumar, IAS Chief Administrator, Special Area Development Project, KBK, Koraput suggesting to impose major penalty of compulsory retirement to the petitioner appellant communicated vide Memo No.23715/IPS dated 24th May, 2010 against the Memorandum No.1650/IPS dated 7th January, 2008; (ii) for removal of Inquiring Officer and dropping of illegal charges to be made since no copies of this documents, notes on order sheet and other information asked were denied and for retaining the matter since



24

4

OA No.320/2010
A.K.Upadhya-Vrs-UI&Ors

more than seven years; and (iii) for granting consequential relief for grant of actual salary and increments from the date of the order passed w.e.f. 11.6.1993."

3. The Union Public Service Commission (Respondent No.2) filed counter in which, it has been stated that they have nothing to state as the cause of action complained against is of the Government. A preliminary counter has been filed by Respondent No.5, i.e. Principal Secretary (Home), Government of Odisha.

4. Mr.Bijay Kumr Panda, Learned Counsel for the Applicant contended that as per Rule 8(24) of the AIS (D&A) Rules, after the conclusion of the inquiry, a report shall be prepared by the IO which shall contain the articles of charge and the statement of imputations of misconduct or misbehaviour; the defence of the member of the Service in respect of each article of charge; an assessment of the evidence in respect of each article of charge; and the findings on each article of charge and the reasons therefor. The IO has no competence and authority to recommend which punishment should be imposed on the Applicant. It has been contended that when the statute requires to do certain thing in certain way the thing must be done in that way or not at all, other methods or mode of performance are impliedly and necessarily forbidden. In this Connection he has placed reliance on the decision of the Hon'ble Apex Court in the case of **Indian Bank's Association Vrs Devkala Consultancy Service**, AIR 2014 SC

25

2615. This apart, Mr.Panda by placing reliance on various decisions of the Hon'ble Apex Court, has made endeavor to set aside the report of the IO on the ground that the IO reached the conclusion without supplying the documents/materials to the Applicant which are relevant for the purpose of giving an effective statement of defence to disapprove.

Mr.G.C.Nayak, Learned Government Advocate appearing for the State of Odisha, on the other hand, contended that it is not the case of the applicant that the charge sheet has been issued by a person who has no jurisdiction. Hence by placing reliance on the decision in the case of **Secretary, Ministry of Defence and others Vrs Prabhash Chandra Mirdha**, reported in (2013) 1 SCC (L&S) 121 (paras 8,10 and 12) Mr. Nayak vehemently objected ^{to} in the interference in the charge sheet issued to the applicant. It has been stated that after receipt of the advice of UPSC the same has been supplied to the applicant to submit his statement of defence. But before the final decision is taken, the Applicant has retired from service on reaching the age of superannuation. Hence the matter was again referred to Govt. of India for clarification and the Govt. of India clarified that no punishment either major or minor can be imposed against a retired AIS Officer under AIS (D&A) Rules, 1969 rather only action under AIS (DCRB) Rules, 1958 can be taken for withholding the pension (full or part). Therefore, the matter was again referred to Government of India



26

proposing to examine for withholding of the pension as per AIS (DCRB) Rules, 1958. He has also denied the allegation for violation of principles of natural justice. It has been stated that in spite of repeated opportunities, the applicant did not participate in the proceeding rather made baseless allegation against the entire administration. Accordingly Mr. Nayak prayed for dismissal of this OA.

5. We have considered the submissions advanced by the respective parties and perused the records. In this connection Rule 8 (24) of the Rules, 1969 being ^{of} much relevance to the issue is quoted herein below:

"8. Procedure for imposing major penalties.- (1) No order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and rule 10, or, provided by the Public Servants (Inquiries) Act 1850 (37 of 1850) where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or mis-behaviour against a member of the Service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act 1850, as the case may be, an authority to inquire into the truth thereof.

24)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of imputations of misconduct or misbehaviour;

(b) the defence of the member of the Service in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge; and

(d) the findings on each article of charge and the reasons therefor.



27

Explanation.- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge.

Provided that the findings on such article of charge shall not be recorded unless the member of the Service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority shall forward to the disciplinary authority the records of inquiry which shall include-

- (a) the report prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the member of the Service;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the member of the Service or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry."

6. The duty and responsibility and what should contain the report of the IO has been codified in the Rules. It has been observed that unless the statutory rules or the specific order under which an officer is appointed to hold an inquiry so requires the Enquiry Officer need not make any recommendations as to the punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry. The Enquiry Officer is under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the Government Servant against whom the departmental enquiry is held, and



28

his function merely is to conduct the enquiry in accordance with law and to submit the record along with his findings or conclusions on the various charges which have been preferred against the delinquent /Government Servant. But if the Enquiry Officer recommends ^{that} a particular penalty or punishment should be imposed in the light of his findings or conclusions that is likely to affect the mind of the punishing authority even with regard to penalty or punishment to be imposed on such officer. Rule does not confer any such power on the IO. Indubitably, the well ingrained principle of law is that it is the Disciplinary Authority, or the Appellate Authority in appeal, who is competent to decide the nature of punishment to be imposed on a delinquent employee keeping in view the seriousness of the misconduct committed by an employee. No discretion is vested with the IO to suggest imposition of punishment be it major or minor. If it is so then it amounts to acting beyond the authority and jurisdiction contrary to Rules as well as assuming and usurping the power and function of the Disciplinary Authority by the IO. Besides, admittedly the IO reached the conclusion ex parte. It is a matter of paramount importance for any Court to ensure that the miscarriage of justice be avoided in all circumstances. The procedure adopted by the IO is arbitrary, whimsical and without any reasonable explanation. Therefore, we feel it to be a deserving case where intervention of this Tribunal is warranted. Accordingly, we quash the



29

report of the IO and remit the matter back to the Disciplinary Authority to take a decision as to whether at this stage especially when the applicant has in the meantime retired from Government service, there is any need, in the peculiar circumstances of the case, to proceed with the enquiry and if it is decided to proceed, he may proceed with the enquiry, as per Rules, but in that event to see that the entire proceedings should come to an end within a period of 120 days from the date of receipt of copy of this order failing which the proceedings shall stand culminated. In view of the above, there is no need to pass any specific order on the subsequent orders passed by the authority as it is trite law that once the basis of a proceeding is gone, all consequential acts, actions, orders, would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders [vide **Badrinath v Govt. of Tamil Nadu & Ors**, AIR 2000 SC 3243).

7. In the result, with the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.



(R.C.Misra)
Member(Admn.)



(A.K.Patnaik)
Member (Judicial)